

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

OP.No. 18991 of 2002(S)

PETITIONER:

1. UNION OF INDIA,
REPRESENTED BY THE SECRETARY/DIRECTOR GENERAL OF
POSTS, MINISTRY OF COMMUNICATIONS, NEW DELHI-110001.
2. THE CHIEF POSTMASTER GENERAL,
KERALA CIRCLE, THIRUVANANTHAPURAM.
3. THE SENIOR SUPERINTENDENT OF RAILWAY
MAIL SERVICE, THIRUVANANTHAPURAM DIVISION,
THIRUVANANTHAPURAM.
4. THE SUB RECORD OFFICER,
RMS `TV' DIVISION, ALAPPUZHA-688 012.

BY ADV. SRI.P.PARAMESWARAN NAIR, ASST.SOLICITOR
SRI.JOHN VARGHESE, SCGSC

RESPONDENTS:

1. T.M.RIYAS, AGED 24 YEARS,
S/O.S.A.THAHIR, CASUAL MAZDOOR, SUB RECORD OFFICE,
RAILWAY MAIL SERVICE `TV' DIVISION, ALAPPUZHA,
RESIDING AT `VELIMPARAMPIL', LAJANATH WARD,
ALAPPUZHA.
2. THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH, REPRESENTED BY ITS REGISTRAR.

BY ADV. SRI.M.A.SHAFIK

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 25/10/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

O.P. NO. 18991/2002

: 2 :

ORDER ON C.M.P. NO. 32391/2002 IN O.P. NO. 18991/2002

DISMISSED

25.10.2007

SD/- K. BALAKRISHNAN NAIR, JUDGE.

SD/- T.R. RAMACHANDRAN NAIR, JUDGE.

/True Copy/

P.A to Judge.

K. BALAKRISHNAN NAIR & T.R. RAMACHANDRAN NAIR,JJ

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O.P. NO. 18991 OF 2002

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Dated this the 25th day of October, 2007.

JUDGMENT

Balakrishnan Nair,J

The petitioners are the respondents in O.A. No. 1031/2001 before the Central Administrative Tribunal, Ernakulam Bench. The case of the applicant in the said O.A. may be summarised as follows:

2. He was working as a casual Mazdoor from 1997 onwards under the 4th respondent. Everyday he was working for 4 hours. Four vacancies of ED Mail Man arose in 2001 under the 4th respondent. The applicant was called for an interview on 13.11.2001. He was made to compete for the post along with other general candidates. He claimed preferential treatment in the light of the letter dated 06.06.1988 of the Director General of Posts available to casual mazdoors. So he filed a representation before the 4th respondent to consider him for appointment giving him preference. When no action was taken in his representation, the O.A was filed.

3. The respondents in the O.A, who are the petitioners herein resisted the application contending that he was initially engaged as a substitute of an E.D. Mailman with effect from 08.12.1998 and thereafter engaged as an outside Mazdoor and not as a regular casual

labourer/mazdoor. Since the applicant was not sponsored by the Employment Exchange, he is not entitled to the benefit of the aforementioned letter dated 06.06.1988. The said letter insists that the full time or part-time casual labourer should be initially appointed by the employment exchange. The petitioner was, therefore, considered along with other general candidates and was included as Serial No. 37 in a ranked list of 40 candidates. The tribunal, after hearing both sides, held that the petitioner being a casual labourer/Mazdoor, is entitled to be considered for appointment to the post of E.D. Mailman in the light of the instructions issued by the Director General of Posts dated 06.06.1988. The said letter is produced as Ext.P4 in this writ petition. The objection raised by the petitioners herein, that the applicant not being one sponsored by the employment exchange, is not entitled to get preference, was overruled by the CAT relying on an earlier decision of the Tribunal in O.A. No. 360/99. The tribunal further declared that he is entitled to get preference as a casual labourer in the matter of appointment to the post of E.D. Mailman. It was also ordered that if the applicant is unsuitable or ineligible, then only selection from outsiders can be made. The petitioners challenge the said order of the Central Administrative Tribunal, Ext.P3 in this writ petition.

4. The main contention raised in this writ petition is that the applicant does not have 240 days service in an year. The said point is not raised before the Central Administrative Tribunal and therefore not considered by it. So, this Court is not justified in going into the merit of the said contention. Secondly, it was contended that the petitioner was only a substitute of E.D. Mailman and therefore by virtue of the Full Bench Decision of the Central Administrative Tribunal, a copy of which is produced as Annexure R4 along with Ext.P2 statement, he is not entitled to preference. If the petitioner is a substitute engaged in an E.D. post, the said decision will apply. We notice that the writ petitioners do not have any such case in their reply statement. Initially, according to them the 1st respondent was engaged as a substitute of E.D. Mailman. Thereafter, he was working as an outside Mazdoor who is not one sponsored by the employment exchange. The C.A.T in the above Full Bench decision did not consider the claim of the casual labourers/Mazdoors who are working in other posts on casual basis other than E.D. posts. The said decision was concerning the lack of preference of substitutes working in E.D. posts. In view of the said difference in the facts of the case, the aforementioned Full Bench decision of the CAT can have no application to the facts of this case.

5. Going by the grounds raised in this writ petition, we are of the view that no ground has been made out warranting interference with the order of the CAT. The learned counsel for the petitioners brought to our notice a decision of this Court in O.P. No. 29228/2002. It was a case where the applicant concerned was only a substitute working in the E.D. posts. Therefore, the decision in that case have no application to this case where the petitioner has been treated as a casual labourer by the Tribunal based on the pleadings and the materials on record. In the result, the original petition fails and it is dismissed.

K. BALAKRISHNAN NAIR, JUDGE.

T.R. RAMACHANDRAN NAIR, JUDGE.

O.P. NO. 18991/2002

: 5:

K. BALAKRISHNAN NAIR &
T.R. RAMACHANDRAN NAIR, JJ

O.P. NO. 18991 of 2002

25th day of October, 2007

JUDGMENT

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